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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/633,320	08/07/2000	George H. Buabbud	560043610121	3464

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EXAMINER

SRIVASTAVA, VIVEK

ART UNIT

PAPER NUMBER

2617

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/633,320	BUABBUD, GEORGE H.	
	Examiner	Art Unit	
	Vivek Srivastava	2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 11-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-16 is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☒ Claim(s) 2-4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

The indicated allowability of claim 1 is withdrawn in view of the newly discovered reference(s) to Frigo et al. Rejections based on the newly cited reference(s) follow.

Claims 2 – 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 11 – 16 are allowed.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 – 4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,460,182. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to modify claim 14 in 6,460,182.

Regarding claim 1, the ‘transmitting light at a first wavelength’ step in the instant application corresponds to the ‘transmitting light at a first wavelength’ step in claim 14 in 6,460,182. Claim 1 in the instant application recites the additional limitation “two separate optical paths” and “multiplicity of first paths” which is not recited in claim 14 in 6,460,182. However, it would have been obvious to one skilled in the art at the time the invention was made to modify claim 14 in patent 6,460,182 to include additional limitations or “two separate optical paths” and “multiplicity of first paths” for the benefit of increasing system bandwidth and efficiency.

The “bidirectionally transmitting light” step in the instant application corresponds to the claimed “bidirectionally transmitting light” step in claim 14. The “bidirectionally transmitting light” step in the instant application recites the additional limitation of “two intermediate locations” and “multiplicity of second paths”. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the “bidirectionally transmitting light” step in claim 14 of patent 6,460,182 to include the claimed limitations for the added benefit of increasing bandwidth and efficiency by increasing the number of intermediate locations and transmission paths.

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The “transmitting first and second RF signals” step in claim 1 in instant application corresponds to the “transmitting signals” in step 14. However, the claimed “transmitting a first and second signals” in step in the instant application recites the additional limitation of “transmitting the first and second signals in a second frequency bands”. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify claim 14 of patent 6,460,182 to include the claimed limitations for the added benefit for bidirectional communication of both first and second signals.

The “further modulating” and “receiving” steps in instant application corresponds to the claimed “further modulating” and “receiving” steps in patent 6,460,182. It is noted any obvious modifications have been addressed.

Claims 2 – 4 are rejected for being dependent on a rejected base claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frigo et al (US 5,742,414 – cited by Applicants).

Regarding claim 1, Frigo discloses a method of providing multiples services via wavelength division router. Frigo discloses transmitting light at a first wavelength modulated by first RF signals from the first location i.e. 'headend station 10 (see col 4 lines 60 – 67) to at least two intermediate NIU stations (col 5 lines 1 – 4) via at least two separate optical paths (see fig 5) and from each of the NIU's to a multiplicity of second user locations (see 'subscribers' in fig 11A and 11B) on a multiplicity of first paths (see fig 11A and 11B each having at least two electrical conductors.

Frigo further discloses transmitting light a second wavelength for carrying telephone signals both upstream and downstream on at least two optical paths between the first location and at least two intermediate locations and from at least two intermediate locations to second locations on a multiplicity of second paths having at least two electrical conductors (see fig 11A, col 5 lines 15 – 47, col 2 lines 28 – 43, col 4 lines 1 – 67).

Frigo still further discloses the claimed "second RF signals at selected frequencies within a second frequency band from at least two of said multiplicity of second locations one each to said at least two intermediate locations on at least two of said multiplicity of first paths (see col 4 lines 1 – 67).

Frigo also discloses further modulating the transmitted light having said second wavelength traveling from said at least two intermediate locations to said first location on said at least two optical paths with said first and second RF signals from the at least two locations (see col 4 lines 1 – 67 and col 5 lines 38 – 47). It is noted that the upstream communication would necessarily be at a different or second wavelength.

Frigo still further discloses receiving the second RF signals within the second frequency band at the first headend location enabling upstream communication.

Frigo fails to disclose the claimed transmitting the first signal upstream and receiving the first signal within the second frequency band at the first location. Official notice is taken it would have been well known in the art to provide a cable modem for upstream communication for enhancing a user's interactive experience by providing services to user per the user's request like video on demand. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Frigo to include the claimed limitation to provide the user with additional services thus enhancing the user's interactive experience.

Claims 2 – 4 are rejected for being dependant on rejected base claim.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivek Srivastava whose telephone number is (571) 272-7304. The examiner can normally be reached on Monday – Friday from 9 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on (571) 272-7294. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vs
5/25/05


VIVEK SRIVASTAVA
PRIMARY EXAMINER